



October 13, 1999

Mr. Leonard W. Peck, Jr.  
Assistant General Counsel  
Texas Department of Criminal Justice  
P.O. Box 4004  
Huntsville, Texas 77342-4004

OR99-2934

Dear Mr. Peck:

You have asked whether certain information is subject to required public disclosure under the Public Information Act (the "act"), chapter 552 of the Government Code. Your request was assigned ID# 128047.

The Texas Department of Criminal Justice (the "TDCJ") received an open records request for seven categories of information concerning TDCJ's rules, directives, committee meetings, and other related records. In response to the request, you submit to this office for review the records at issue, consisting of a memorandum responsive to item five of the request.<sup>1</sup> You assert that the submitted information is excepted from disclosure under sections 552.108 and 552.110 of the Government Code. We have considered the exceptions and arguments you have raised and reviewed the submitted information.

Section 552.108, the "law enforcement exception," provides as follows:

Sec. 552.108. Exception: Certain Law Enforcement and Prosecutorial Information.

(a) Information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from the requirements of Section 552.021 if:

(1) release of the information would interfere with the detection, investigation, or prosecution of crime;

---

<sup>1</sup>We assume that you will release other responsive records to the extent they exist, since you have not raised any other exceptions, nor submitted other records.

(2) it is information that deals with the detection, investigation, or prosecution of crime only in relation to an investigation that did not result in conviction or deferred adjudication; or

(3) it is information that:

(A) is prepared by an attorney representing the state in anticipation of or in the course of preparing for criminal litigation; or

(B) reflects the mental impressions or legal reasoning of an attorney representing the state.

(b) An internal record or notation of a law enforcement agency or prosecutor that is maintained for internal use in matters relating to law enforcement or prosecution is excepted from the requirements of Section 552.021 if:

(1) release of the internal record or notation would interfere with law enforcement or prosecution;

(2) the internal record or notation relates to law enforcement only in relation to an investigation that did not result in conviction or deferred adjudication; or

(3) the internal record or notation:

(A) is prepared by an attorney representing the state in anticipation of or in the course of preparing for criminal litigation; or

(B) reflects the mental impressions or legal reasoning of an attorney representing the state.

(c) This section does not except from the requirements of Section 552.021 information that is basic information about an arrested person, an arrest, or a crime.

This statute is designed to protect law enforcement interests. *See* Open Records Decision No. 252 (1980). As you raise section 552.108 without reference to a specific subsection, we construe your argument to include all pertinent subsections. Section 552.108(b) is relevant to the subject information. When section 552.108(b) is claimed, the governmental body

claiming it must reasonably explain, if the information does not supply the explanation on its face, how releasing the information would unduly interfere with law enforcement. Open Records Decision No. 434 at 2-3 (1986). Whether disclosure of particular records will unduly interfere with crime prevention must be decided on a case-by-case basis. Attorney General Opinion MW-381 (1981).

This office has stated that under the statutory predecessor to section 552.108(b), a governmental body may withhold information that would reveal law enforcement techniques. *See, e.g.*, Open Records Decision Nos. 531 (1989) (release of detailed use of force guidelines would unduly interfere with law enforcement), 456 (1987) (release of forms containing information regarding location of off-duty police officers in advance would unduly interfere with law enforcement), 413 (1984) (release of sketch showing security measures to be used at next execution would unduly interfere with law enforcement), 409 (1984) (if information regarding certain burglaries exhibits a pattern that reveals investigative techniques, information is excepted under section 552.108), 341 (1982) (release of certain information from Department of Public Safety would unduly interfere with law enforcement because release would hamper departmental efforts to detect forgeries of drivers' licenses), 252 (1980) (section 552.108 is designed to protect investigative techniques and procedures used in law enforcement), 143 (1976) (disclosure of specific operations or specialized equipment directly related to investigation or detection of crime may be excepted). To claim this exception, however, a governmental body must meet its burden of explaining, if the requested information does not supply the explanation on its face, how and why release of the requested information would interfere with law enforcement and crime prevention. Open Records Decision Nos. 562 at 10 (1990). Further, commonly known policies and techniques may not be withheld under section 552.108. *See, e.g.*, Open Records Decision Nos. 531 at 2-3 (1989) (Penal Code provisions, common-law rules, and constitutional limitations on use of force are not protected under section 552.108), 252 at 3 (1980) (governmental body did not meet burden because it did not indicate why investigative procedures and techniques requested were any different from those commonly known).

You contend that details about the application of policy in concrete situations can be excepted under section 552.108. Specifically, you assert that the submitted information is used to "assure that the use of mechanical restraints with death row inmates is consistent with the Use of Force Plan (which is public) and that the special security risks associated with death row offenders are properly managed, for the protection of death row and other offenders, employees, and the public." In this instance, based on your arguments and the document at issue, we conclude that you may withhold the information under section 552.108 of the Government Code. Open Records Decision No. 531 (1989); *see also* Open Records Letters 98-1101 (1998), 96-2133 (1996).

As we resolve your request under section 552.108, we need not address your other claimed exception. We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Sincerely,

A handwritten signature in cursive script that reads "Sam Haddad". The signature is written in black ink and is positioned above the printed name.

Sam Haddad  
Assistant Attorney General  
Open Records Division

SH/nc

Ref.: ID# 128047

Encl.: Submitted documents

cc: Ms. Yolanda M. Torres  
American Civil Liberties Union – Northern Region  
Dallas Chapter  
P.O. Box 710356  
Dallas, Texas 75371  
(w/o enclosures)